

8.
IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT,
BUREAU COUNTY, STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS
Plaintiff,
v.
GULF and WESTERN INDUSTRIES, INC.
a Delaware Corporation,
Defendant,
and
THE NEW JERSEY ZINC COMPANY, INC.
a Delaware Corporation,
Intervenor.

NO. 78-CH-4

RECEIVED
REGION V

MAR 24 1982

ENVIRONMENTAL PROTECTION AGENCY
STATE OF ILLINOIS

EPA Region 5 Records Ctr.



239279

CONSENT ORDER

Upon the consent of GULF and WESTERN INDUSTRIES, INC., acting herein through its division, G & W Natural Resources Group ("GWI"), THE NEW JERSEY ZINC COMPANY, INC., ("NJZ"), and THE PEOPLE OF THE STATE OF ILLINOIS and the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("IEPA"), (the People and the IEPA sometimes hereinafter referred to as "Illinois") by TYRONE C. FAHNER, the Attorney General of the State of Illinois,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction of the subject matter herein and of the parties.
2. The Agreement of GWI, NJZ and Illinois, a copy of which is appended hereto, is incorporated herein and made a part of this Consent Order.
3. The Complaint and Amended Complaint, subject of this action, are dismissed with prejudice.
4. This Order is enforceable by contempt and as otherwise specifically provided in the Agreement.
5. The parties shall bear their own costs and expenses.

CIRCUIT COURT
BUREAU COUNTY
TRUE COPY

NOT 1981

CIRCUIT COURT FOR THE
THIRTEENTH JUDICIAL DISTRICT
BUREAU COUNTY, ILLINOIS

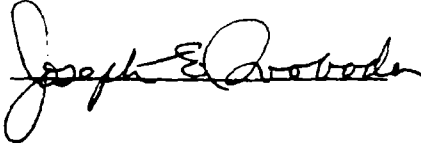
Judge

Date:

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

Approved:

Joseph Svoboda
Chief, Enforcement Programs Manager

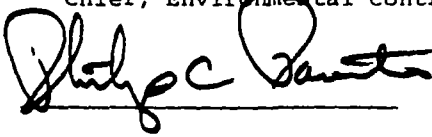


Date 10/28/81

TYRONE C. FAHNER
ATTORNEY GENERAL
STATE OF ILLINOIS

Approved:

Philip C. Parenti
Chief, Environmental Control Division



Date 10/29/81

GULF and WESTERN INDUSTRIES, INC.
acting through its division, G & W
Natural Resources Group

Approved:

Robert P. Marshall
Secretary, General Counsel
G & W Natural Resources Group

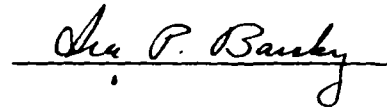


Date 10/26/81

THE NEW JERSEY ZINC COMPANY, INC.

Approved:

Ira P. Barsky
Secretary, The New Jersey Zinc
Company, Inc.



Date 10/28/81

IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT,
BUREAU COUNTY, STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)	
)	
Plaintiff,)	
)	
v.)	NO. 78-CH-4
)	
GULF and WESTERN INDUSTRIES, INC.)	
a Delaware Corporation,)	
)	
Defendant,)	
)	
and)	
)	
THE NEW JERSEY ZINC COMPANY, INC.)	
a Delaware Corporation,)	
)	
Intervenor.)	

AGREEMENT

THE PEOPLE OF THE STATE OF ILLINOIS and the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("IEPA"), (the People and IEPA sometimes hereinafter referred to as "Illinois"), by TYRONE C. FAHNER, the Attorney General of the State of Illinois, and GULF and WESTERN INDUSTRIES, INC., ("GWI") a Delaware corporation, and THE NEW JERSEY ZINC COMPANY, INC. ("NJZ") a Delaware corporation, agree as follows:

ARTICLE I
MUTUAL REPRESENTATIONS

It is hereby stipulated and agreed by and between Illinois, GWI and NJZ, parties to the above-captioned proceeding, through their respective attorneys, that the above-captioned proceeding, may be settled on the basis hereinafter set forth. This Agreement is effective October 29, 1981.

It is expressly understood and agreed to and between the parties that if this Agreement is not accepted by this Court, the provisions of this Agreement may not be used as an admission or any other type of evidence in any other administrative, civil, or criminal proceeding by any party, by the Court, or by any other person, corporation, or unit or agency of government, or by any multiple or combination thereof.

The parties respectively reserve the right to pursue and defend against the Complaint and the Amended Complaint in this action if the Court does not accept and approve this Agreement in its entirety by November 1, 1981.

Upon approval and acceptance of this Agreement by the Court and upon incorporation of the provisions of this Agreement into a Consent Order, the parties hereto shall be bound by the provisions of this Agreement in accordance with the terms hereof.

ARTICLE II
STATEMENT OF FACTS

1. Illinois filed the original Complaint in this action on March 28, 1978, and an Amended Complaint in this action on December 18, 1980. Both Complaints allege that GWI violated the Illinois Environmental Protection Act, Ill. Rev. Stat. 1979, ch. 111 1/2, pars 1001 et seq (Act), at its property known as New Jersey Zinc, located in or near the Village of De Pue, specifically located within the northeast and southeast quarter of Section 35 and within the northwest quarter of the southwest quarter of Section 36, all in Township 16 North, Range 10 East, Bureau County, Illinois (site).

2. In its answers to said Complaints, GWI denied any such violations.

3. NJZ is a Delaware corporation, incorporated in 1981. GWI and NJZ represent that NJZ is neither a subsidiary of GWI nor affiliated with GWI in any way. NJZ purchased the site on September 30, 1981.

4. The physical layout of the site as relevant to this Agreement consists of the following;

- a. a pile of zinc smelting residues, measuring approximately 15.5 acres and located at the southern end of the site (pile),
- b. a ditch which surrounds the pile, starting north of the pile and connecting to the Marquette Street drain south of the pile (ditch), and

c. five ridges of north-south orientation of lithopone residues located north of the pile and ditch, said ridges being numbered consecutively 2 through 6, and ridge number 2 being the northern most ridge (ridges).

5. The parties agree that the technical program to be implemented under this Agreement is a technically feasible and economically reasonable program and that it is in the public interest to settle this litigation by means of this Agreement.

6. The parties disagree as to the applicability of the National Pollutant Discharge Elimination System (NPDES) Permit Program (33 U.S.C. §§ 1251 et seq.) to the site. Plaintiff maintains that an NPDES Permit is necessary for the site as it presently exists. Defendant maintains that an NPDES Permit is not necessary for the present site or for the storm water conveyance to be constructed at the site.

7. The parties agree for purposes of this Agreement only, that the ditch and storm water conveyance to be constructed at the site will be subject to an NPDES Permit for the 5 year period or such period as extended pursuant to this Agreement. NJZ will make application for the NPDES Permit.

8. Except as provided in Paragraph 7 of this Article, the parties specifically reserve the right to require or oppose the requirement of an NPDES Permit for the site, and nothing in this Agreement is or may be used as a relinquishment of any party's position or an admission by any party as to the applicability of the NPDES Permit Program to the site.

9. The parties further specifically reserve the right to pursue and defend against any violations of the Act and regulations promulgated pursuant to the Act, which may occur at the site in the future except as specifically provided in Article VI of this Agreement.

10. This Agreement does not include or encompass any findings or agreements relative to the site or to this cause of action except as specifically provided herein.

11. NJZ has entered its appearance in this suit and submitted to the jurisdiction of this Court for the purpose of entering this Agreement. (Exhibit A, Entry of Appearance).

12. GWI has been served with summons and complaint in this action, and has appeared by counsel.

13. This Court has jurisdiction to enter this Consent Order.

ARTICLE III
ACTIONS TO BE TAKEN REGARDING THE SITE

1. Actions to be Taken on the Ridges.

a. GWI and NJZ shall grade and cover ridges 4 and 5 by placing and incorporating to a depth of approximately six inches, three tons of hydrated lime per acre between said ridges, grading ridges 4 and 5 on top of said hydrated lime and working in seven additional tons of hydrated lime per acre, covering the graded area with at least six to twelve inches of loamy earth, indigenous to the site, capable of supporting vegetative growth, and conditioned with hydrated lime and suitably fertilized to support vegetative growth. Said area to be seeded with appropriate grasses and legumes.

b. GWI and NJZ shall repair the break in the earthen berm which runs along the south side of the ridges. Surplus surface water collecting behind the berm shall be diverted through an appropriate runoff control device.

c. Plans for said actions shall be submitted to IEPA/Mines Pollution Control Program (MPCP) and IEPA/Division of Water Pollution Control (DWPC) Field Operations Section (FOS), Region I for review and written approval prior to commencing construction. (Exhibit B, Addresses for Submittals to Parties).

*Why?
Inches
(increased copy 4.
please because
wrote them to have
one - but nothing
with them)*

2. Actions to be Taken on the Ditch.

a. GWI and NJZ shall engineer and install a storm water conveyance beginning north of the pile, at a point approximately where the ditch passes under the railroad tracks and

ending at a point south of the pile, where the existing drain under Marquette Street begins. Said conveyance shall be approximately 1,000 feet long, shall be of a size compatible with the existing Marquette Street drain, shall have a tight and fast connection to the Marquette Street drain, shall follow the appropriate course of the present ditch and shall have an appropriate mesh screen at the entrance to prevent infiltration of trash and other debris.

b. GWI and NJZ shall fill in the present ditch with soil, clay and calcareous materials so as to assure an impervious barrier between leachate from the pile and the storm water conveyance.

c. Construction permit applications and plans for said actions shall be submitted to IEPA/DWPC Permits Section and IEPA/DWPC FOS, Region I for review and approval 90 days prior to commencing construction. Work shall not begin without written IEPA approval of permit applications and plans.

3. Actions to be Taken on the Pile.

a. GWI and NJZ shall engineer and execute a cover for the top area of the pile so that runoff from the top of the pile is directed and discharged through one discharge conveyance. Said cover shall consist of approximately 24 inches of a loamy earth, indigenous to the site, capable of supporting vegetation, conditioned with hydrated lime and suitably fertilized to support vegetative growth. The cover shall be vegetated with suitable grasses and legumes.

b. GWI and NJZ shall engineer and install a permanent conveyance constructed of an impervious material to direct the runoff from the top of the pile into the storm water conveyance.

c. Plans for said actions shall be submitted to IEPA/MPCP and IEPA/DWPC FOS, Region I for review and approval prior to commencing work. Work shall not begin without written IEPA approval of said plans.

4. IEPA shall review construction permit applications and other plans submitted for approval by GWI and NJZ under this Agreement for compliance with IEPA's published criteria for such applications and plans and/or compliance with standard engineering and construction practices, as appropriate.

5. From the initiation of work under this Article, GWI and NJZ shall monitor, and shall perform maintenance and remedial work as necessary at the site, including but not limited to adequate re-seeding and necessary mulching protection prior to September each year of this Agreement beginning in 1982 and shall remedy any condition which occurs as a result of the work provided hereunder and which may impede the reduction of the amount of heavy metals in the ditch or storm water conveyance.

6. Monitoring and Sampling Program

a. GWI and NJZ shall monitor, sample and report to IEPA/DWPC, FOS Region I, influent and effluent of the ditch or storm water conveyance at the following designated points;

-Sampling Point I, a point along the drainage ditch which is upstream of the ridge area,

-Sampling Point II, a point where the runoff conveyance empties into the ditch, and

-Sampling Point III, a point where the ditch flow leaves the Marquette Street drain pipe.

b. The frequency and parameters of sampling shall be as follows;

-once per month at Point III with the analysis for zinc, cadmium, copper, iron, lead, manganese, total suspended solids, pH and flow;

-once per month at Point II with analysis for zinc, cadmium, copper, iron, lead, manganese, total suspended solids, pH and flow for 24 months after the completion of all the work of Paragraphs 1, 2 and 3 of the Article. After the first six months of said sampling, should samples at Point III meet Illinois Pollution Control Board Rules and Regulations, Chapter 3: Water Pollution Rule (Water Rule) 408 (a) requirements for any tested parameter for 3 months consecutively, further monitoring at Point II for said parameter will not be required.

-within one month of the effective date of the Consent Order entered pursuant to this Agreement (EDO) and within one month of completion of all the work on Paragraphs 1, 2 and 3 of this Article, at Points I, II and III with analysis for all Water Rule 408(a) parameters.

*Effective Date of
Order*

-within one month of completion of work on each of Paragraphs 1 and 2 of this Article and semi-annually for two years after completion of all work on Paragraphs 1, 2 and 3, at Points I, II and III with an analysis for barium, chromium (total hexavalent and trivalent), mercury, nickel, selenium, and silver.

c. Sampling shall be by grab samples.

d. GWI and NJZ shall install a flow device to monitor the flow in the storm water conveyance at Point II and Point III.

ARTICLE IV PERFORMANCE BOND

1. GWI shall post a performance bond of \$225,000 (Two Hundred and Twenty-Five Thousand and no/100 Dollars). The form of said Bond shall as be attached to this Agreement in Exhibit C and incorporated herein.

2. GWI shall forfeit to the State of Illinois said Bond in the amount of \$225,000 (Two Hundred and Twenty-Five Thousand and no/100 Dollars), or its remainder as provided in Paragraph 6 of this Article, in the event that GWI and NJZ should fail to substantially comply with the schedule provided in Article V, or to comply with any of the required actions of this Agreement or any approved plans provided for under this Agreement or any condition of the Bond as attached to this Agreement.

3. This performance bond is not an undertaking to indemnify the State or IEPA for actual damages as may be sustained by the State or IEPA by reason of the failure or inability of GWI and NJZ to comply with the required actions of this Agreement. This Bond fixes a sum to be paid by GWI without regard to actual damages, if any, by reasons of the failure or inability of GWI and NJZ to comply with the required actions of this Agreement.

4. In the event of forfeiture by GWI, any monies paid to Illinois are for the purpose of completing the agreed program set out in this Agreement, except as otherwise provided by Court Order.

5. Upon receipt of written proof to IEPA/DWPC FOS, Region I that all work required under Paragraphs 1, 2, and 3 of Article III of this Agreement has been faithfully completed, IEPA will expeditiously conduct a verification inspection of such completed work. Within 90 days of said inspection, IEPA shall notify GWI and NJZ in writing of any deficiencies in the work, or that the work has been satisfactorily completed and that the Surety has been so notified. Within 90 days of verification by IEPA that the work has been satisfactorily completed, IEPA will notify the Surety that the Performance Bond may be partially released in the amount of Two Hundred Thousand and no/100 (\$200,000) Dollars.

6. Upon receipt of written proof to IEPA/DWPC FOS Region I that all work required under Paragraphs 5 and 6 of Article III of this Agreement has been faithfully completed, IEPA will expeditiously conduct a verification inspection of such completed work. Within 90 days of said inspection, IEPA shall notify GWI and NJZ in writing of any deficiencies in the work, or that the work has been satisfactorily completed and that the Surety has been so notified. Within 90 days of verification by IEPA that the work has been satisfactorily completed, IEPA will notify the Surety that the Performance Bond may be released for the remainder amount of Twenty-Five Thousand and no/100 (\$25,000) Dollars.

ARTICLE V
SCHEDULE OF COMPLIANCE WITH THIS AGREEMENT

1. GWI shall post the performance bond for Article IV within one month of EDO.

2. NJZ shall make application for the NPDES permit provided for in this Agreement not later than February 1, 1982.

3. GWI and NJZ shall submit the construction permit applications and engineering plans for Article III, Paragraphs 1(c) and 2(c) within four (4) months of EDO but not later than February 1, 1982.

4. GWI and NJZ shall complete the work set out in Article III, Paragraph 1 no later than September 1, 1982 and shall complete the work set out in Article III, Paragraph 2 no later than December 1, 1982.

5. GWI and NJZ shall submit the engineering plans and other information which require IEPA approval for Article III, Paragraph 3(c) within 12 months of EDO.

6. GWI and NJZ shall complete all work set out in Article III, Paragraph 3 by September 1, 1984; said work to be performed in two stages, approximately half of the pile area shall be completed by September 1, 1983 and the remaining pile area shall be completed by September 1, 1984.

7. GWI and NJZ shall perform the work and sampling set out in Article III, Paragraphs 5 and 6 until five years from EDO; provided however that if the completion dates set out in Paragraphs 4 and 6 of this Article are extended, GWI and NJZ shall perform the work and sampling set out in Article III, Paragraphs 5 and 6, for 24 months from the completion of all of the work set out in Paragraphs 1, 2 and of Article III.

8. Inspection and Reporting.

a. IEPA may conduct semi-annual inspection of the site in the spring and fall for 60 months from EDO or until 24 months after the final work on Article III, Paragraphs 1, 2 and 3 is completed. IEPA may conduct additional inspections as necessary, provided that all such inspections shall be at reasonable times.

b. GWI and NJZ shall submit to IEPA/DWPC FOS Region I, quarterly progress reports on the work completed for Article III, Paragraphs 1, 2, 3, and 5 commencing within three months of EDO.

c. GWI and NJZ shall submit to IEPA/DWPC FOS Region I, quarterly reports of the monitoring data as required in Article III, Paragraph 6.

9. The dates of this Article may be extended for less than 90 days by agreement of GWI, NJZ and IEPA if any event occurs beyond the control of GWI and NJZ, which causes or may cause a delay in complying with the dates in Paragraphs 3, 4, 5, 6 or 7 of this Article; provided however, that GWI or NJZ shall notify IEPA/DWPC FOS, Region I, in writing of the delay or anticipated delay as soon as it has knowledge thereof, the anticipated length of the delay, the cause of the delay, and the measures being taken or to be taken to minimize the delay. After said notification, IEPA and GWI or NJZ shall confer regarding the event and determine whether the compliance schedule set forth in Paragraphs 3, 4, 5, 6 or 7 of this Article shall be extended. Extensions under this Paragraph shall not result in Article III, Paragraphs 1, 2, 3, 4 or 5 being completed more than 90 days beyond the dates specified in this Article.

10. The dates of this Article may be extended beyond 90 days by Court Order only if the failure of GWI and NJZ to meet said dates is caused by Acts of God or the public enemy, expropriation or confiscation of facilities, fire, explosion, flood, tornado, earthquake, lightening, riot, sabotage, war, or labor strike. GWI and NJZ shall have the burden of establishing that such event did occur and that an extension of the compliance dates is necessary. Extensions under this Paragraph shall be no greater than equal to the time of delay caused by said event.

11. In the event that IEPA does not act on completed applications and plans within 90 days of submission, the dates of this Article shall be extended one day for each day beyond 90 days in which IEPA does not act. GWI and NJZ waive their right to have an approval of permit applications by operation of statute because of but only to the extent of such time delay.

ARTICLE VI
NPDES PERMIT, EFFLUENT AND WATER QUALITY DURING 5 YEAR AGREEMENT

1. Any NPDES Permit for the ditch or the storm water conveyance at the site, issued pursuant to NJZ's application for same provided for in this Agreement, shall provide interim limitations for those con-

taminants specified under Water Rule 408(a), under which the ditch or the storm water conveyance at the site will not be subject to Water Rule 408(a) effluent limitations for a 5-year period, and a final NPDES Permit condition which requires compliance with the Act, and all Water Rule Chapter 3 standards.

2. During the 5 year period of this Agreement or as extended under Article V, Paragraphs 9, 10 and 11, or Article VIII, Illinois will not institute enforcement action against GWI or NJZ for any violations of the effluent regulations and/or corresponding violations of the Act in connection with the ridges, the ditch or the pile so long as GWI and NJZ are in compliance with the required actions of this Agreement.

3. GWI and NJZ will provide to Illinois a verified water quality study within 15 months of EDO for use by IEPA, GWI and NJZ in establishing a water quality level for Lake De Pue for the remainder of this Agreement (Agreement Level). No study shall be commenced until a proposal for study using standard methods shall be agreed on between IEPA, GWI and NJZ.

4. During the 5 year period of this Agreement or as extended under Article V, Paragraphs 9, 10 and 11 or Article VIII for zinc, cadmium, copper, iron, lead, manganese and total suspended solids, Illinois will only enforce against GWI or NJZ in the event that water quality violations in Lake De Pue for said parameters exceed the Agreement Level, are caused or contributed to by GWI or NJZ, and could not have been reasonably foreseen in the plans and work approved by IEPA under this Agreement.

ARTICLE VII DEFAULT

1. Should GWI and NJZ fail to comply with any provision of this Agreement in a manner not provided for in Article V, Paragraphs 9, 10, and 11, Illinois may exercise its right to the Performance Bond as provided under Article IV.

2. Should GWI and NJZ fail to comply with any provisions of this Agreement in a manner not provided for in Article V, Paragraphs 9, 10, and 11, Illinois may enforce compliance with any term or provisions of the Agreement by a contempt action or as otherwise provided by law as well as receiving payment of the Performance Bond under Article IV.

ARTICLE VIII
MODIFICATION

1. This Agreement may be modified by the Court after review of a joint motion and stipulation filed by the parties which motion shall set forth explicitly all terms to be modified and each party's agreement to said modification.

2. Any party seeking to modify this Agreement, and a Stipulation for modification between the parties not having been reached after a reasonable period of time for negotiation, may apply to this Court for the limited purpose of obtaining a ruling on the proposed modification.

ARTICLE IX
DISMISSAL

Upon acceptance and approval of this Agreement by the Court, this Agreement may be incorporated into a Consent Order under which this cause is dismissed with prejudice.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

BY: Joseph Svoboda, Manager
Enforcement Programs

Joseph E. Svoboda
(Signature)

10/28/81
(Dated)

TYRONE C. FAHNER
Attorney General
State of Illinois

BY: Philip C. Parenti
Assistant Illinois
Attorney General
Chief, Environmental
Control Division

Philip C. Parenti
(Signature)

10/29/81
(Dated)

THE NEW JERSEY ZINC COMPANY, INC.

BY: Ira P. Barsky, Secretary
The New Jersey Zinc
Company, Inc.

Ira P. Barsky
(Signature)

10/28/81
(Dated)

GULF and WESTERN INDUSTRIES,
INC., acting through its
division, G & W Natural
Resources Group

BY: Robert P. Marshall, Secretary,
General Counsel - G & W
Natural Resources Group

Robert P. Marshall
(Signature)

10/28/81
(Dated)

STATE OF ILLINOIS)
) SS.
COUNTY OF BUREAU)

EXHIBIT A

IN THE CIRCUIT COURT FOR THE THIRTEENTH JUDICIAL CIRCUIT,
BUREAU COUNTY, STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
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Plaintiff,)
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v.) NO. 78-CH-4
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GULF AND WESTERN INDUSTRIES, INC.,)
a Delaware Corporation,)
)
and Defendant,)
)
THE NEW JERSEY ZINC COMPANY, INC.,)
a Delaware Corporation,)
)
Intervenor.)

ENTRY OF APPEARANCE

NOW COMES The New Jersey Zinc Company, Inc. (NJZ) a Delaware corporation and enters its appearance in this cause and states as follows:

1. NJZ has an interest in the instant litigation in that NJZ became the owner of the property involved in this cause on September 30, 1981.

2. NJZ consents to the jurisdiction of this court to enter the Consent Order pursuant to the Agreement between NJZ, Gulf and Western Industries, Inc., acting through its division, G&W Natural Resources Group and the State of Illinois, said Agreement effective October 29, 1981.

THE NEW JERSEY ZINC COMPANY, INC.

Marice Skonitz
NOTARY

BY:

Ira P. Barsky
IRA P. BARSKY

Secretary

The New Jersey Zinc Company, Inc.

NOTARY PUBLIC
JANUARY 1, 1982
COUNTY OF BUREAU, ILLINOIS

EXHIBIT B

ADDRESSES FOR SUBMITTALS
TO PARTIES

IEPA/Mines Pollution Control Program
2200 Churchill Road
Springfield, Illinois 62706
Attention: Harry Chappel, Permit Engineer

IEPA/DWPC Field Operations Section, Region I
4302 North Main Street
Rockford, Illinois 61103
Attention: Harris Chien, Manager

IEPA/DWPC
2200 Churchill Road
Springfield, Illinois 62706
Attention: Yogish Sheth, Permit Engineer

G&W Natural Resources Group
One Commerce Place
Nashville, Tennessee 37239
Attention: Bruce R. Granoff, Environmental Counsel

The New Jersey Zinc Company, Inc.
2 University Plaza, Suite 500
Hackensack, New Jersey 07601
Attention: Ira P. Barsky, Secretary